

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

September 13, 2002

IN RE:

**Proposed Rules for the Provisioning of Tariff Term
Plans and Special Contracts**

DOCKET NO. 00-00702

**INITIAL ORDER OF HEARING OFFICER
ON SEPTEMBER 9, 2002, PRE-HEARING CONFERENCE**

This matter came before Director Deborah Taylor Tate acting as Hearing Officer, for the purpose of conducting a Pre-Hearing Conference to establish a procedural schedule for a Hearing that will be convened as a part of this rulemaking docket.

I. Procedural History

Seventy-one (71) contract service arrangements ("CSAs") were filed and docketed for consideration on the Agenda for the August 5, 2002 Authority Conference by three voting panels.¹ The previous Directors of the Authority had suspended all 70 BellSouth CSAs for sixty (60) days during a Conference held on June 18, 2002 as a result of the rejection of the Authority's proposed CSA rules and the concerns expressed by the Attorney General in a letter dated May 31, 2002. In addition to articulating several overall concerns the Attorney General specifically stated that the proposed rules were being returned because, as drafted, the rules could

¹ One of the 71 CSAs was a CSA filed by Citizens (Docket No. 02-00767). The remaining 70 CSAs had been filed by BST.

create a violation of the Public Records Act (Tenn. Code Ann. § 10-7-503). In addition, the rules provided unclear definitions of “affiliated” and “revenue price-out.”

On August 2, 2002, the Consumer Advocate filed a Complaint or Petition to Intervene in all 70 BellSouth CSA dockets on the August 5th Conference. The Complaint or Petition was based on many of the concerns raised in the Attorney General’s May 31, 2002 letter. At the August 5th Conference, BellSouth and the Consumer Advocate announced that they had reached an agreement whereby the Consumer Advocate would agree to allow the CSAs to go into effect and BellSouth would agree not to oppose the Consumer Advocate’s request to pursue its concerns through a contested case proceeding. The CSAs would go into effect pending the outcome of the proceeding in order that BellSouth customers could receive the benefit of the CSAs. After the establishment of criteria, a determination would be made regarding whether or not the CSAs should be approved or disapproved. Through discussions with the parties during the August 5th Conference it became apparent that the oral agreement between BellSouth and the Consumer Advocate did not address all of the CSA concerns raised by the Attorney General in his May 31st letter. As a result the Directors permitted General Counsel time to explore these concerns with the parties and to discuss this proposed agreement with the advisory section of the Attorney General’s office. Following those meetings, it was confirmed that the Attorney General did not oppose the CSAs going into effect as was proposed by BellSouth and the Consumer Advocate in the agreement. The CSAs would go into effect subject to a review by the Authority as to whether or not they should be approved or disapproved.

On August 7, 2002, the parties presented a letter to the Directors that represented an agreement between the Consumer Advocate and BellSouth. After consideration of this letter, and the parties’ oral comments, the Directors voted to proceed with the rulemaking process

rather than a contested case hearing. In addition to the above-mentioned actions taken at the August 7th Conference, the Directors also directed BellSouth and the Consumer Advocate to file for approval by the Authority the proposed Customer Notice letter that BellSouth intended to send to each customer of those CSAs that were permitted to become effective.

Docket No. 00-00702 was placed by the Directors on the regularly scheduled Authority Conference on August 19, 2002. At the August 19th Conference, Director Tate was appointed the Pre-Hearing Officer in this matter to prepare the matter for hearing. On August 20, 2002, the Pre-Hearing Officer issued a Notice setting a pre-hearing conference to be held on September 4, 2002.² The Notice of August 20, 2002 also directed the parties to file a proposed procedural schedule that would conclude with a hearing no later than September 30, 2002. The parties were also directed to file a list of proposed criteria to be considered in evaluating CSAs. In response to this Notice some of the parties filed a Joint Statement in Response to the Notice of Filing and Pre-Hearing Conference on August 29, 2002. The Joint Statement, because of ongoing settlement discussions between the parties, proposed an alternative schedule that would result in a hearing the week of December 9, 2002.

II. September 9, 2002 Pre-Hearing Conference

In attendance at the Pre-Hearing Conference were the following parties:

AT&T Communications of the South Central States ("AT&T") and Southeast Competitive Carriers Association – **Henry Walker, Esq.**, Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, TN 37219-8062;

BellSouth Telecommunications, Inc. ("BellSouth") – **Joelle Phillips, Esq.**, 333 Commerce Street, 22nd Floor, Suite 2101, Nashville, TN 37201-3300;

Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter – **Vance L. Broemel, Esq.**, 425 5th Avenue North, Cordell Hull Building, Nashville, TN 37243-0500;

² At the request of the parties the Pre-Hearing Conference was rescheduled for September 9, 2002.

Sprint Communications Company, L.P. ("Sprint") and United Telephone –Southeast, Inc. ("Sprint-United") - **James Wright, Esq.**, 14111 Capitol Boulevard, Wake Forest, NC 27587-7587;

Time Warner Communications of the Mid-South, Inc. - **Charles B. Welch, Jr., Esq.**, Farris, Warfield & Kanaday, PLC, SunTrust Center, 424 Church Street, Suite 1800, Nashville, TN 37219-2327;

As the first order of business the Pre-Hearing Officer addressed two matters that remained outstanding: BellSouth's Customer Notice Letter and the filing of CSA customer names.

A. Customer Notice Letter

During the deliberations of the Directors on August 7 a major concern of the Directors was the effect this process would have on the customers who had entered into the CSAs under consideration and determined that the CSAs under discussion, as well as any that might be filed during the rulemaking process, would be allowed to go into effect subject to further review of all CSAs under the new rules and potentially could be approved, denied or altered at some time in the future. The Authority directed the parties to submit a customer notice letter to this effect and such letter was submitted on August 20, 2002. This letter is adequate for the purpose it was intended. Other future customer notification letters regarding this matter should also be submitted to the Authority for approval.

B. The Filing of CSA Customer Names

In letters dated June 10, 2002 and July 24, 2002 BellSouth acknowledged that it would file the names of CSA customers in accordance with the comments in the Attorney General's May 31, 2002 letter. As of the date of the Pre-hearing conference, BellSouth had not filed those customers' names. After counsel for BellSouth stated, during the Pre-Hearing conference

that BellSouth was expecting for an order from the Authority directing it to file the customer names, the Pre-Hearing Officer ordered BellSouth to file the CSA customer names.

C. Procedural Schedule

BellSouth and Consumer Advocate presented the Authority through their filing of August 7 a request for relief through a contested case. Consistent with the direction given by the Court of Appeals in the *Tennessee Cable Television Association v. Tennessee Public Service Commission* decision³ the Authority voted to proceed with the rulemaking process to resolve concerns expressed in the May 31, 2002 letter from the Attorney General. Rulemaking is the process by which an agency lays down new prescriptions to govern the future conduct of those subject to its authority.⁴ Along with the statutory requirements of public notice and opportunity to be heard, agencies are given wide discretion to carry out the collaborative process of rulemaking. The parties in this matter have agreed to the use of a hearing as a method of establishing a record of facts upon which the Authority may rely in determining certain issues in the rulemaking. This hearing process will resemble a contested case in that it will allow for discovery between the parties, the submission of testimony and the cross-examination of witnesses however, it will take place within a less formal proceeding. This Pre-Hearing Conference was scheduled primarily to establish a procedural schedule for that hearing process and to narrow the issues that to be considered. The Joint Filing of August 20 requested the Pre-Hearing Officer to delay the hearing process for the purpose of allowing certain parties to continue settlement discussions in order to narrow or resolve many of the issues raised by the Attorney General's letter. In the interest of judicial economy and the goal of promulgating acceptable rules, the Hearing Officer is of the opinion that these discussions should continue for a reasonable period. Nevertheless, the parties

³ *Tennessee Cable Television Ass'n v. Tennessee Pub. Serv. Comm'n*, 844 S.W.2d 151,158 (Tenn. Ct. App. 1992).
⁴ *Id.*, at 161

agreed during the Pre-Hearing Conference to provide progress reports to the Authority every two weeks for the purpose of ensuring that unfruitful discussions will not cause unnecessary delay in this proceeding.

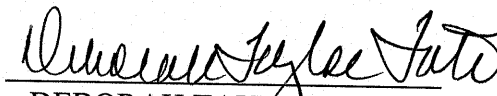
Given the direction provided in the Tennessee Court of Appeals' *Tennessee Cable Association v. Tennessee Public Service Commission* decision, the previous decisions in this docket by the Authority, along with the comments filed before and comments made orally during the Pre-Hearing Conference on September 9, 2002, this rulemaking process should continue to its conclusion. A procedural schedule will not be established at this time. The ongoing settlement discussions between the parties may also continue, with progress reports being filed every two weeks culminating in a final report to be filed with the Authority by October 21, 2002 regarding the results of the discussions. A Pre-Hearing Conference will be held on October 22, 2002.

IT IS THEREFORE ORDERED THAT:

1. The proposed Customer Notification Letter submitted jointly by BellSouth and the Consumer Advocate on August 20, 2002 is approved. BellSouth shall provide to the Authority a copy of each notification letter sent to its CSA customers that will be filed in the Docket file for each respective CSA.
2. BellSouth shall file with the Authority the name and address of each customer with which BellSouth has entered into a CSA and shall, on a going forward basis, provide the name and address of the customer with each CSA submitted to the Authority for approval.
3. Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order Such Petition shall be considered by the Hearing Officer presiding herein;

4. Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of the Order. If the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial Order within the time prescribed by Tenn. Code Ann. § 4-5-315, this Order shall become the Final Order.

ENTERED THIS 13 DAY OF September, 2002.


DEBORAH TAYLOR TATE,
AS HEARING OFFICER